BRITISH COLUMBIA PREMIER'S ADVISORY COUNCIL FOR PERSONS WITH DISABILITIES

Report of task team on the enforcement of the B.C. building code with particular reference to section 3.7

PREMIER'S ADVISORY COUNCIL
FOR PERSONS WITH DISABILITIES

BRITISH COLUMBIA

PREMIER'S ADVISORY COUNCIL
FOR PERSONS WITH DISABILITIES

REPORT
OF
TASK TEAM
ON
THE ENFORCEMENT OF THE B.C. BUILDING CODE
WITH PARTICULAR REFERENCE TO
SECTION 3.7
(BUILDING REQUIREMENTS FOR PERSONS WITH DISABILITIES)

SEPTEMBER 1990

Written by:
Erika R. Trimble
Principal Researcher

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Union of
British
Columbia
Municipalities

Suite 15
10551 Shellbridge Way
Richmond
British Columbia
V6X 2W9
Phone (604) 270-8226
Fax. (604) 660-2271

President
Mayor Len Traboulay

Executive Director
Richard Taylor

September 7, 1990

Mr. Paul Theile, Chairman and Members
Premier's Advisory Council
for Persons with Disabilities
224 - 800 Hornby Street
Vancouver, B.C.
V6Z 2C5

Dear Mr. Chairman and Council Members:

It has been my pleasure to act as Chairman of the first "outside" Task Team established by the Premier's Advisory Council for Persons with Disabilities and to present to you our report. The Task Team's job - addressing enforcement of section 3.7 of the B.C. Building Code and making recommendations to strengthen same - was made most interesting and informative by the wealth of professional expertise and experience brought to the table by the appointed members who agreed to serve.

This report is the result of much discussion and several rewrites, but we were determined to get it right. I believe we have achieved that end through a thorough review and understanding of the many jurisdictions involved and affecting enforcement of section 3.7. In fact the clarification and responsibilities of those jurisdictions is a key theme in the Task Team's recommendations.

It is our hope that the Council endorses the report's recommendations and that action and implementation will follow.

On behalf of the Task Team

Marilyn Baker

Mayor Marilyn Baker
Past President

MB/jmw
MYC.842

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I. EXECUTIVE SUMMARY

In March of 1990, the British Columbia Premier's Advisory Council appointed a Task Team to deal with problems of enforcement of Section 3.7 of the B.C. Building Code, the section which specifies building requirements for persons with disabilities. The long lifespan and use of buildings magnifies the importance of meeting these requirements in the beginning of design and during construction.

The Task Team's role was to study and make recommendations on ways to strengthen the process of enforcing Section 3.7. Its report and recommendations will be presented to the Premier's Advisory Council which is then responsible for taking further action.

The nine recommendations of the Task Team are presented under the following headings and can be found on pages 16 to 21 in the Report.

ENFORCEMENT:

ROLES AND RESPONSIBILITIES IN DESIGN AND CONSTRUCTION

ENFORCEMENT:

USE OF LETTERS OF ASSURANCE

ENFORCEMENT:

THE EDUCATION COMPONENT

ENFORCEMENT:

THE CONSULTATION PROCESS

ENFORCEMENT:

THE LEGAL RECOURSE

ENFORCEMENT:

SOME MAJOR GAPS

While the primary purpose of the Task Team was to make recommendations on ways to strengthen and standardize the enforcement of Section 3.7 of the Code, the recommendations, if adopted, will serve to strengthen the enforcement of the entire Building Code.

II. TASK TEAM ON THE ENFORCEMENT OF SECTION 3.7 OF THE B.C. BUILDING CODE

British Columbia has one of the most far-sighted building codes for the benefit of citizens with disabilities. Nonetheless, the Premier's Advisory Council has received a number of representations on problems related to the implementation of Section 3.7 of the B.C. Building Code.

In May of 1989, the Premier's Advisory Council passed a resolution to review problems of education, compliance and enforcement of Section 3.7 of the B.C. Building Code, which is the section that specifies the building requirements for persons with disabilities.

On a review of these issues, a decision followed that the Architectural Institute of B.C. (AIBC) form a task force that would address the concerns related to education and compliance. The AIBC Accessibility in Buildings Task Force was established in June, 1989 to develop the education, awareness and professional development necessary for the incorporation of accessible design into the mainstream of architectural practice. The Task Force is working in close cooperation with the Premier's Advisory Council.

Some of the current initiatives of the AIBC Task Force include: exploring ways of assisting the School of Architecture at U.B.C. in teaching accessible design; developing an educational program for registered professionals; and applying for grants to develop an educational delivery system on accessible architecture.

In March of 1990, the Premier's Advisory Council set up a Task Team to deal with problems of enforcement of Section 3.7 of the B.C. Building Code.

Mayor Marilyn Baker of the District of North Vancouver and Past President of the Union of B.C. Municipalities was chosen to chair the Task Team. Task Team members brought expertise from: The Architectural Institute of B.C., the B.C. Coalition of People with Disabilities, the Building Inspectors' Association of B.C., the Building Standards Branch, City of Vancouver, the Association of Professional Engineers of B.C., the Urban Development Institute, the Premier's Advisory Council for Persons with Disabilities, and consumers. A list of members appears in Appendix "A" of this report.

The objectives of the Task Team were defined as follows:

1. Identify the variables, from municipality to municipality, in the enforcement of the B.C. Building Code, with particular reference to Section 3.7.

2. Study methods to strengthen and standardize the process of enforcement, with particular reference to Section 3.7.

3. Identify other possible relevant objectives of the Task Team.

4. Make recommendations with respect to the above to the Premier's Advisory Council for Persons with Disabilities for submission to the appropriate authorities.

III. THE REVIEW

The review of the enforcement of Section 3.7 of the B.C. Building Code entailed the following:

i. In March, a questionnaire on enforcement practices and recommendations was sent to 177 municipalities and regional districts in the province and 88 responses were received. (Close to 50 percent). (A copy of the questionnaire can be found in Appendix "B".)

ii. A news release was widely distributed through newsletters of both professional and disability organizations relevant to the review. This news release called for written submissions from individuals and groups on the objectives of the Task Team. A copy of the news release can be found in Appendix "C". Written responses were due in mid June and seven were received.

iii. Legal opinions were requested from Mr. Bob Bauman, of Bull Housser & Tupper, who specializes in municipal law. The questions to him focused on issues of legal recourse, liability and enforcement options.

iv. In addition, the Task Team reviewed the REPORT OF THE IMPLEMENTATION TASK FORCE STATION SQUARE COMMISSION OF INQUIRY and the recommendations contained in this report. (Station Square was a development project at Metro Town in Burnaby, B.C. where, in 1988, during the opening ceremonies, 6,400 square feet of the roof structure collapsed in the produce area of the Save-On-Foods store. Extensive inquiries took place in relation to design, inspection and supervision of the project.)

IV. SUMMARY OF SUBMISSIONS

The information submitted for our review will be presented here in part only to give the reader the general flavour of these submissions.

This information has not been weighted by any criteria in this section of the report; it is at times presented in the actual words of the respondents. We acknowledge here these responses and our appreciation of them.

The Task Team's consideration of this information is reflected in the recommendations which appear in the following section of this report.

I. ROLES AND RESPONSIBILITIES

The question of responsibility was presented to the solicitor for opinion. His response was as follows:

(a) the owner has the responsibility for ensuring the building is designed and built according to the Building Code;

(b) the responsibility of the municipality is to ensure that the appropriate design professionals have accepted prime responsibility;

(c) the design professionals have prime responsibility for design and, during construction, for assuring compliance with the Building Code; and

(d) the contractors and builders have the responsibility during the construction stage for compliance with design and construction requirements of the Code.

The Station Square Inquiry recommendations are consistent with the above.

One of the Station Square Inquiry recommendations (Recommendation No. 10) was the establishment of provincial standards of practice for all building designs governed by Parts 2, 3, 4, 5, and 8 of the Building Code; and the Building Standards Branch, Ministry of Municipal Affairs was suggested for implementation of this recommendation.

ii. LETTERS OF ASSURANCE

The information received from the questionnaire returns indicated that Letters of Assurance specific to Section 3.7 (Building Requirements for Persons with Disabilities) of the B.C. Building Code are generally not used by municipalities and regional districts.

Nine municipalities or regional districts out of 84 said they require the use of Letters of Assurance for Section 3.7.

As a result of the Station Square Inquiry recommendations, an amendment to the Building Code, which includes Section 3.7, requiring use of Letters of Assurance is at this time underway. The revision will mandate the use of Letters of Assurance in British Columbia for complex buildings -- particularly Part 3, of the Building Code -- including Section 3.7. Approval for this revision is anticipated before the end of 1990.

The requirements will state that Letters of Assurance be used as follows:

: prior to the issuance of a permit, the OWNER will submit Letters of Assurance confirming that he/she has retained the necessary registered professionals for all the applicable disciplines, for professional design and field review;

: the Letters of Assurance submitted by the OWNER will incorporate assurance of professional design and commitment for field review;

: prior to the issuance of an occupancy permit, the OWNER will submit Letters of Assurance confirming that the professional field review has been completed for all the applicable disciplines;

: the Letters of Assurance issued by the OWNER confirm the construction of the project substantially conforms with the plans, specifications and related documents for which the permit was issued.

iii. EDUCATION

Although the AIBC Accessibility in Building Task Force is concentrating its efforts on education and professional development for the purposes of integrating accessible design into architectural practice, effective enforcement may require additional educational efforts.

The questionnaire returns and written briefs provided a variety of perceptions and comments on education. The following are excerpts from some of the material received:

: certification of all professionals be required in the application of building requirements for persons with disabilities.

: education of professionals involved in the building design and construction might include: workshops for builders, plumbers, designers and building officials on the requirements of Section 3.7; "Best Methods" training for designers and builders; video presentations on solutions to difficult design problems; newsletter identifying known problems, solutions, and suggestions; catalogue of available materials and suppliers for meeting the requirements of Section 3.7.

: the general public needs to have an understanding of the responsibilities of owners and building departments in relation to the building requirements for persons with disabilities.

: public education programs might include: T.V. ads by well-known people; municipalities should issue decals to post on buildings that have made provisions for persons with disabilities; pamphlets should be made available to the public advising on advantages to users of buildings which have met the requirements of Section 3.7 (distributed by Municipal and Regional District Offices); information should be distributed to owners of businesses to educate them on the needs of the disabled.

: a checklist be developed on the requirements and criteria for compliance with Section 3.7. Such a checklist would be used in the design phase, as a guide to spot checking by the designer of buildings, building inspectors and in the final certification by the builder/owner.

iv. ADVISORY BODIES

The creation and use of advisory bodies received some support from both the questionnaire responses and the written submissions as follows:

: provision of expertise and guidance regarding interpretation of barrier-free requirements across the province. Such advice may be made through a formal arrangement similar to the one People in Motion has developed with the City of Kelowna.

: a "Provincial Access Consultant", within the Ministry of Municipal Affairs, who would provide valuable liaison for municipalities to ensure current information regarding barrier-free design requirements and standards are available at the local level.

: a body of representatives of organizations of the disabled, construction associations, building officials, should monitor the usefulness and the application of the requirements of Section 3.7.

: a toll-free number for anyone to call and discuss questions pertaining to Section 3.7.

v. THE BUILDING CODE

Improvements to the existing Building Code and Handbook were suggested in the questionnaire results as follows:

: the language of the code needs to be made less technical;

: many of the clauses refer back to the main sections of the Code and, therefore, create difficulty in following the text;

: some requirements for the hearing and visually disabled may be difficult to achieve after the project has been constructed.

It should be noted here that revisions to the Code presently being proposed include the integration of some of Section 3.7 into the main body of the Code. (These are revisions to the 1990 edition which will come out in late 1991 or early 1992.) Support for this decision was given by the respondents in that it would remove Section 3.7's special status.

vi. LEGAL RECOURSE

The Task Team consulted with Mr. Bob Bauman, a solicitor specializing in municipal law. Our particular interest was related to legal recourse in the enforcement of the B.C. Building Code, Section 3.7.

Methods available to municipalities when the requirements of the Code have not been met are as follows (our editorial comments follow each method):

(a) A summary conviction proceeding, under the Offence Act resulting in a fine.

This process takes about six or seven months and often results in an insignificant fine, as the justice system may not view such an offence as seriously as others. Many municipalities, therefore, do not pursue this method.

(b) A civil proceeding under the Municipal Act, where the Municipality gets an injunction restraining breach of the Code, or an Order requiring compliance with the Code.

This is a more expensive option for a Municipality due to legal fees. It has been found very effective in the time frame it takes and the outcome that results. This approach can be viewed as credible by-law enforcement on the part of a Municipality.

(c) A by-law under Section 735 of the Municipal Act authorizes a municipality to bring a building up to the standard in the by-law by undertaking the work and back-charging the cost or providing time limits to correct it and by providing an Appeals Procedure.

By-laws can be a very effective remedy when the breach is clear.

(d) Section 750.1 of the Municipal Act is a filing against title to the lands saying there is a breach of the law.

This is not a remedy but serves to give notice to the parties. This can be effective where there is financing and funds which can be held back until removal of the breach from the title.

(e) A Licencing Inspector can have a hearing and consider a suspension of a contractor's business licence when a contractor ignores the provisions of the Code.

This can be a very effective method; often it is sufficient to merely send a letter of intent to the contractor.

Effective enforcement requires a strong commitment at the political level and municipal personnel to be enthusiastic about these remedies, and supportive of by-law enforcement.

When municipalities exercise discretion and engage in selective non-enforcement of the Code, a remedy for the citizen is the Charter of Rights and Freedoms, qualifying a municipality's duties to treat people equally under the law.

Finally, on the matter of liability of a municipality, courts are now reviewing a muncipality's policy decisions as "reasonable" conduct or not. This will encourage municipalities to adopt responsible policy decisions.

V. RECOMMENDATIONS

ENFORCEMENT: ROLES AND RESPONSIBILITIES IN DESIGN AND CONSTRUCTION

1. The Station Square Commission of Inquiry pointed out the need for a clear definition of roles and responsibilities of all parties involved in the design and construction of buildings governed by the Code. The recommendations included the development of standards of practice for building designs and a manual of recommended construction practices and procedures.

   The Inquiry made a number of additional recommendations and **the Task Team recommends and supports** the directions suggested by The Station Square Commission of Inquiry.

2. The qualifications of building inspectors should be reviewed and clearly established.

   The Task Team recommends that: standardized qualifications for building inspectors be established and that these include specific knowledge of the Building Code requirements for persons with disabilities.

3. **The Task Team recommends that:** the responsibilities of building inspectors be clearly established, as put forward in the recommendations of The Station Square Commission of Inquiry.

4. **The requirements for architects and engineers are governed by professional associations, however, there is no mandated, formalized training for and monitoring of contractors and builders.**

The Task Team recommends that: the qualifications, responsibilities and monitoring of builders and contractors be established by the Province in relation to the Building Code requirements generally and for persons with disabilities specifically.

ENFORCEMENT: USE OF LETTERS OF ASSURANCE

5. **The Task Team supports the recommendation** made by the Station Square Commission of Inquiry on the use of standard letters of assurance for all aspects of the Building Code throughout the province by owners, architects and engineers.

ENFORCEMENT: THE EDUCATION COMPONENT

6. **The Task Team recommends the following:**

(a) That all relevant disciplines -- particularly those providing certification -- be required to become trained in the application of building requirements for persons with disabilities. The Ministry of Municipal Affairs, Recreation and Culture should develop the appropriate course to achieve this end.

(b) that educational materials and programs be developed:

i. for professionals on the building requirements for persons with disabilities such as "Best Methods" training, catalogue of materials and suppliers relevant to the requirements;

ii. the development and construction industries through their various associations be requested to include Section 3.7 content in their educational programs for members;

iii. for the general public on the needs of the disabled and the responsibilities of owners and building departments in this regard.

Responsibility for the development of these materials needs to be assigned.

(c) that the Building Standards Branch develop a criteria checklist specific to the present Section 3.7 and define its use by owners/builders, other relevant disciplines and municipal building departments.

ENFORCEMENT: A CONSULTATION PROCESS

7. **The Task Team recommends that:** the consultation process for Building Code requirements including and specific to Section 3.7 be formalized and well publicized.

The process could include:

(a) the provision of expertise and guidance at the municipal level on the interpretation of the building requirements for persons with disabilities and municipal support for the development of local advisory committees with the required expertise to assist in this role;

(b) the Ministry of Municipal Affairs, Recreation and Culture develop a program to enhance the liaison with municipalities and regional districts on the requirements for persons with disabilities.

ENFORCEMENT: THE LEGAL RECOURSE

8. **The Task Team recommends that:** the following options for legal recourse during and following construction be clearly outlined to municipal and regional district personnel as tools available for enforcing Section 3.7:

   (a) summary conviction proceedings, under the Offence Act resulting in a fine;

   (b) civil proceedings under the Municipal Act, where the Municipality gets an injunction restraining breach of the Code, or an Order requiring compliance with the Code;

   (c) by-law under Section 735 of the Municipal Act authorizing a municipality to bring a building up to the standard in the by-law by undertaking the work and back-charging the cost, providing time limits to correct it, and/or providing an Appeals Procedure;

   (d) Section 750.1 of the Municipal Act, a filing against title to the lands saying there is a breach of the law;

   (e) a licensing inspector can have a hearing and consider a suspension of a contractor's business license when a contractor ignores the provisions of the Code.

The Task Team recommends that: municipal/regional district personnel take the appropriate action to ensure compliance with Section 3.7 and that it be clearly stated that selective non-compliance is not acceptable.

ENFORCEMENT: SOME MAJOR GAPS

9. (a) At this time, the law exempts the Provincial and Federal Crowns, Vancouver Port Corporation, Crown Corporations, et al, from being bound by the Building Code.

The Task Team recommends that: a review be undertaken to standardize the enforcement approach with owners of all buildings within all municipalities and regional districts.

(b) **The Task Team recommends:** a uniform approach to the application of the Building Code for all municipalities and regional districts; this would include by-laws to be put in place where they presently are not.

(c) **The Task Team recommends:** a review to establish standardized application of Section 3.7 of the Building Code to building renovations.

VI.

APPENDICES

APPENDIX A.

TASK TEAM MEMBERS

PREMIER'S ADVISORY COUNCIL FOR PERSONS WITH DISABILITIES

TASK TEAM ON THE ENFORCEMENT OF THE B.C. BUILDING CODE WITH PARTICULAR REFERENCE TO SECTION 3.7.

MEMBERS

CHAIRPERSON:
Marilyn Baker,
MAYOR, THE CORPORATION OF THE DISTRICT OF NORTH VANCOUVER
PAST PRESIDENT OF THE UNION OF B.C. MUNICIPALITIES

Michael A. Ernest, MAIBC
Director Professional Services
ARCHITECTURAL INSTITUTE OF B.C.

Dan Guinan
Plan "A" Project Manager
BRITISH COLUMBIA COALITION OF PEOPLE WITH DISABILITIES

John E. Chace
President
Director of Inspection Services
BUILDING INSPECTORS' ASSOCIATION OF B.C.
ALTERNATES: Peter Sweeney
Arnold Rasmussen

Walter Schmid
CONSUMER REPRESENTATIVE

Jack Robertson
Director
MINISTRY OF MUNICIPAL AFFAIRS, RECREATION AND CULTURE, BUILDING STANDARDS BRANCH

Ed Desjardins, C.M., LL.D.
Consultant
G.F. Strong Centre
PREMIER'S ADVISORY COUNCIL FOR PERSONS WITH DISABILITIES

Harry Gray, P.Eng.
Executive Director and Registrar
THE ASSOCIATION OF PROFESSIONAL ENGINEERS
OF BRITISH COLUMBIA

Phillip E. Ring, P.Eng.
Delegate
URBAN DEVELOPMENT INSTITUTE

Roger Hebert, P.Eng.
Director
CITY OF VANCOUVER
DEPARTMENT OF PERMITS AND LICENSES

APPENDIX B.

QUESTIONNAIRE

PREMIER'S ADVISORY COUNCIL FOR PERSONS WITH DISABILITIES

QUESTIONNAIRE TO MUNICIPALITIES AND REGIONAL DISTRICTS ON THE ENFORCEMENT OF THE B.C. BUILDING CODE, WITH PARTICULAR REFERENCE TO SECTION 3.7

The "Building Requirements for Persons with Disabilities" forms Section 3.7 of the B.C. Building Code. Section 3.7 came into effect in 1984 (which superceded Section 10, 1979) and contains a set of minimum requirements for the design of buildings for disabled persons.

The information requested in this questionnaire from both municipalities and regional districts will be restricted in its use as follows:

- it will be used only by the Task Team appointed by the Premier's Advisory Council;
- it will be used as collective data only;
- confidentiality of each individual questionnaire will be respected.

1. a) Does your Municipality/Regional District require the use of "Letters of Assurance" for Section 3.7?

Yes ___ No ___

b) Does your Municipality/Regional District have a written policy for the use of "Letters of Assurance" for Section 3.7?

Yes ___ No ___

If yes, please attach a copy of the policy with your returned questionnaire.

c) If "Letters of Assurance" are required by your Municipality/Regional District, are there exceptions to the use of these letters?

Yes ___ No ___

d) If yes:

: what are these exceptions?

: to whom do these exceptions apply?

2. With particular reference to Section 3.7 of the B.C. Building Code, where deficiencies exist, what policy has been established in your Municipality/Regional District to deal with these deficiencies?

   (Please respond to this question whether or not "Letters of Assurance" have been submitted.)

3. Do you feel that Section 3.7 of the B.C. Building Code should be enforced?

   Yes ___ No ___

   Please comment.

4. Please comment on how you feel more effective enforcement could be achieved with the B.C. Building Code with particular reference to Section 3.7.

   a) education

   b) information

   c) mandatory enforcement

   d) advisory or consultation bodies

   e) other

Name of Municipality/Regional District _____

Completed by: _____

Please send your completed questionnaire by April 6, 1990, to:

Erika R. Trimble
Researcher & Writer
Premier's Advisory Council
for Persons with Disabilities
#224 - 800 Hornby Street
Vancouver, B.C.
V6Z 2C5

APPENDIX C.

NEWS RELEASE

NEWS RELEASE

MARCH, 1990

PREMIER'S ADVISORY COUNCIL CALLS FOR BRIEFS

THE PREMIER'S ADVISORY COUNCIL IS ESTABLISHING ITS FIRST EXTERNAL TASK TEAM ON THE SUBJECT OF ACCESS BY THE DISABLED TO PUBLIC BUILDINGS. INPUT, IN THE FORM OF WRITTEN SUBMISSIONS, IS ENCOURAGED FROM INDIVIDUALS AND GROUPS.

B.C. HAS ONE OF THE MOST FAR-SIGHTED BUILDING CODES FOR THE BENEFIT OF CITIZENS WITH DISABILITIES. FROM THE SUBMISSIONS RECEIVED BY COUNCIL, THIS LEGISLATION IS RUNNING INTO PROBLEMS WITH MANY NEW AND RENOVATED PUBLIC BUILDINGS AROUND THE PROVINCE NOT ACCESSIBLE TO PEOPLE WITH DISABILITIES. THE PREMIER'S ADVISORY COUNCIL IS ESTABLISHING A TASK TEAM TO STUDY ISSUES RELATED TO THE ENFORCEMENT OF THE B.C. BUILDING CODE, WITH PARTICULAR REFERENCE TO SECTION 3.7.

THE TASK TEAM WILL:

....IDENTIFY THE VARIABLES, FROM MUNICIPALITY TO MUNICIPALITY, IN ENFORCING THE B.C. BUILDING CODE, SECTION 3.7.

....STUDY METHODS TO STRENGTHEN AND STANDARDIZE THE PROCESS OF ENFORCEMENT

....MAKE RECOMMENDATION WITH RESPECT TO THE ABOVE TO THE PREMIER'S ADVISORY COUNCIL

THE TASK TEAM WILL BE CHAIRED BY MAYOR MARILYN BAKER OF THE DISTRICT OF NORTH VANCOUVER. MAYOR BAKER IS THE IMMEDIATE PAST PRESIDENT OF THE UNION OF BRITISH COLUMBIA MUNICIPALITIES, ONE OF THE KEY PLAYERS IN THE AREA OF BUILDING INSPECTION AND CODE ADHERENCE.

THE TASK TEAM BRINGS EXPERTISE IN ITS MEMBERSHIP FROM THE ARCHITECTURAL INSTITUTE OF B.C., THE BUILDING INSPECTORS' ASSOCIATION OF B.C., THE PROVINCIAL STANDARDS BRANCH, CITY OF VANCOUVER, THE ASSOCIATION OF PROFESSIONAL ENGINEERS OF B.C., URBAN DEVELOPMENT INSTITUTE, AND CONSUMER REPRESENTATION.

THE BRIEFS SHOULD RELATE SPECIFICALLY TO THE OBJECTIVES OF THE TASK TEAM AS DESCRIBED ABOVE. THE DEADLINE DATE FOR SUBMISSION OF THE BRIEFS IS: JUNE 15, 1990.

SUBMIT BRIEFS TO:

ERIKA R. TRIMBLE,
RESEARCHER AND WRITER,
PREMIER'S ADVISORY COUNCIL
800 HORNBY STREET,
VANCOUVER, BC
V6Z 2C5

APPENDIX D.

CORRESPONDENCE: LEGAL OPINIONS

BULL, HOUSSER & TUPPER

BARRISTERS & SOLICITORS
Patent & Trade-Mark Agents

3000 ROYAL CENTRE · P.O. BOX 11130 · 1055 WEST GEORGIA STREET · VANCOUVER · BRITISH COLUMBIA · CANADA V6E 3R3
FAX 641-4949 · TELEX 04-53395 · TELEPHONE (604) 687-6575

1890 100 YEARS 1990

Reply Attention of R.J. Bauman
Direct Line 641-4854
Our File No.

May 15, 1990

VIA TELECOPIER

Premier's Advisory Council for
Persons with Disabilities
224 - 800 Hornby Street
Vancouver, B.C.
V6Z 2C5

Attention: Ms. Erika R. Trimble

Dear Sirs:

Re: Section 3.7 - British Columbia Building Code

Further to our conference of May 8, 1990, you left a number of legal questions with us for our review and detailed response. We write at this time, however, to provide some preliminary thoughts that might be of assistance to the Council in its deliberations on Wednesday, May 16, 1990.

LETTERS OF ASSURANCE

By letters of assurance, we assume you mean a letter to the Municipality signed by the supervising architect or engineer attesting to compliance with the provisions of section 3.7 of the British Columbia Building Code. In the event that the premises do not so comply, the Municipality still enjoys its traditional recourse against the owner and builder. Traditional recourse would include:

(a) a summary conviction proceeding under the Offense Act resulting, upon conviction, in a fine;

(b) a civil proceeding against the wrong-doers under sections 750 and 751 of the Municipal Act. The successful proceeding would lead to an injunction against the wrong-doers restraining breach of the British Columbia Building Code and, potentially, a mandatory order requiring the owner/builder to complete the premises in compliance with the Code;

(c) a bylaw under section 735 of the Municipal Act authorizing "the demolition, removal or bringing up to a standard specified in the bylaw of a building, structure or thing, in whole or in part, that contravenes a bylaw or Council believes is in an unsafe condition". Section 735 bylaws are a very effective remedy in situations like this;

(d) a filing against title to the lands involved under the provisions of section 750.1 of the Municipal Act (a copy of which is attached).

CONCERNS UNDER THE CHARTER OF RIGHTS AND FREEDOMS

We are not precisely clear on the scope of the issue you raise here. If a municipality in British Columbia adopted a policy, either formally or effectively, not to enforce the provisions of section 3.7 of the British Columbia Building Code, persons with disabilities may have a potential Charter challenge to that formal or informal policy under the provisions of section 15 of the Charter of Rights and Freedoms.

NEW OWNER

You raise a number of issues under this heading. A new owner of a building does inherit any problems with non-compliance with the provisions of section 3.7 and could be subjected to the remedies noted above, save perhaps the summary conviction proceeding under the Offense Act.

An occupancy permit issued by the Municipality confirming compliance with the British Columbia Building Code does not absolve an owner from deficiencies later discovered under the Code. It may, however, subject the municipality issuing the occupancy permit to an action for damages for the negligent misstatement upon which a new owner relied to his detriment.

OCCUPANCY PERMIT

Your notes indicate that a question has arisen as to whether the Municipality can be sued if it refuses to issue an occupancy permit because of non-compliance with section 3.7 of the British Columbia Building Code. An occupancy permit generally is only issued under most municipal bylaws where the construction complies with applicable provisions of municipal bylaws and the British Columbia Building Code. Accordingly, if premises do not so comply and, in particular, do not comply with section 3.7 of the Code, a municipality cannot be successfully sued because it refuses to issue the occupancy permit.

Some of the issues you have left with us require a more thoughtful and detailed response. In the interim, we hope that the foregoing will be of assistance to the Council in its initial deliberations.

Yours truly,

BULL, HOUSSER & TUPPER

Per:

Robert J. Bauman

RJB:wm

BULL, HOUSSER & TUPPER

BARRISTERS & SOLICITORS
Patent & Trade-Mark Agents

3000 ROYAL CENTRE · P.O. BOX 11130 · 1055 WEST GEORGIA STREET · VANCOUVER · BRITISH COLUMBIA · CANADA V6E 3H3
FAX 641-4949 · TELEX 04-53395 · TELEPHONE (604) 687-6575

1890 100 YEARS 1990

Reply Attention of R.L. Seeman
Direct Line 641-4963
Our File No. 9021353

July 9, 1990

VIA TELECOPIER

Premier's Advisory Council for
Persons with Disabilities
224 - 800 Hornby Street
Vancouver, B.C.
V6Z 2C5

Attention: Ms. Erika R. Trimble

Dear Sirs:

Re: Section 3.7 - British Columbia Building Code (the "Code")

Further to our telephone conversation on June 7, 1990, we write to expand upon our opinion.

Questions

In particular, you asked us the following questions which stem from our opinion of May 15, 1990:

1. **Do the provisions of section 3.7 of the Code apply outside municipalities?**

2. **What level of inspection by the Municipal Building Inspector for compliance with section 3.7 is required?**

3. **What is the liability of the Municipality for failing to adequately enforce the provisions of section 3.7?**

Brief Answer

In our opinion, all of the Code including section 3.7 applies with a few exceptions, throughout British Columbia but is enforced by inspection only in areas with building bylaws. The Municipal Building Inspector should provide the best possible inspection for compliance with section 3.7 considering the budgetary limitations of the Municipality. Failure to enforce the provisions raises various questions of liability for the Municipality which are discussed below. Our analysis follows.

ANALYSIS

Applicability

Section 3.7 of the Code, which deals with building requirements for persons with disabilities, is part of the Building Regulations of British Columbia enacted pursuant to section 740 of the Municipal Act. Section 740(2) states that the Building Regulations of British Columbia "apply to all municipalities and to regional districts or parts of them not within a municipality, and has the same force and effect as a validly enacted bylaw of the municipality".

Although this section is not as clear as it could be, we are of the opinion that the Code applies in the Province to municipalities and also parts of regional districts not in municipalities. Except for northwestern B.C., the entire Province is under the jurisdiction of incorporated regional districts. Therefore, the Building Code applies to practically all of the Province. Further exemptions to the Code include land under Federal jurisdiction such as Indian reserves. The Code may not, however, be enforced by building inspection in all regional districts or municipalities. Building inspection is only required if bylaws are passed pursuant to section 734 or 789(1)(d) of the Municipal Act. Accordingly, the Code will only be effectively enforced in areas which have passed building bylaws.

Inspection

The Municipal Act does not impose a specific statutory duty upon municipalities to enforce bylaws or the Code. Section 751 makes such enforcement permissible, not mandatory. However, recent cases from the Supreme

Court of Canada have imposed a broad duty on municipal building inspectors to prevent harm to those within the borders of the municipality. This harm includes both damage to the person and property.

In the past, municipalities would be protected as long as municipal building inspectors complied with a clearly prescribed municipal policy on the level of inspection required. Recently, in the case of Just v. The Queen, the Supreme Court of Canada has held that such municipal policies can be reviewed by the Court as to their reasonableness. The Court would consider the surrounding circumstances, especially budgetary restraints, when considering the reasonableness of a particular policy of inspection.

Therefore, a municipal building inspector may be found negligent if he does not follow an applicable municipal inspection policy or that policy is found to be unreasonable in the circumstances by a court.

For example, if a municipality adopted a policy to enforce the provisions of section 3.7, and a building inspector did not enforce the provisions or provide the same level of inspection in respect thereof, the municipality may be found liable in negligence. Similarly, if a municipality adopted a policy not to enforce the provisions of section 3.7, or to enforce those provisions less frequently than the other provisions of the Code, the municipality may be found liable in negligence unless such a policy can be shown to be reasonable in the circumstances.

The recent adoption of section 755.2 of the Municipal Act has changed the law in British Columbia. This section exempts a municipality from liability for damages or other loss including economic loss, as a result of neglect or failure, for any reason, to enforce a building bylaw or the Code. The Courts have yet to interpret the full effect of this section. The Courts may apply it strictly and limit it to only protect against liability as a result of neglect or failure when there is a policy to enforce the relevant provisions of the bylaw or the Code. The section may not protect against liability for negligence where there is an unreasonable policy not to enforce the applicable provisions.

In our opinion, a policy that does not enforce section 3.7 to the same extent as the rest of the Code may be found not reasonable. Section 3.7 is relatively uncomplicated when compared to the remainder of the Code. Section 3.7 does not require the addition of new building inspectors with specialized knowledge to the municipal staff. Consequently, there is probably little budgetary reason for the establishment of such a policy and therefore the policy may be found to be unreasonable in the absence of other compelling circumstances. An unreasonable policy may be the basis of a finding of negligence against the municipality. The Court may, however, still exempt the municipality from liability based on section 755.2.

Municipal Liability

Municipalities may be found liable to various parties for a failure to enforce the provisions of section 3.7. The greatest exposure may be to a person with a disability who is injured on a property which has been issued an occupancy permit by the municipality despite non-compliance with section 3.7. For example, if a person in a wheel chair is seriously injured due to a fall on an improperly designed ramp, the municipality may have to pay damages if it has performed a negligent inspection and issued an occupancy permit.

It is also possible, but less likely, that a municipality may be held liable to a subsequent owner who purchases property assuming that section 3.7 has been complied with since an occupancy permit has been issued. However, unlike the Code regulations relating to foundation construction, the building components regulated by section 3.7 are not buried deep within the structure and hidden from visitors to the Property. Consequently, it will be difficult for a subsequent owner to argue that he reasonably relied on the occupancy permit issued by the municipality as evidence of compliance with section 3.7.

As stated in our opinion of May 15, 1990, a municipality may also be held responsible pursuant to the Charter of Rights and Freedoms if it adopted a formal or effective policy not to enforce the provisions of section 3.7. Persons with disabilities may then have a potential Charter challenge of the municipal policy under the

provisions of section 15 of the Charter which guarantee that people are to be treated equally under the law.

The Charter of Rights and Freedoms reads in part as follows:

> "15. Every individual is equal before and under the law and has the right to equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on ... physical disability.
>
> 1. The Canadian Charter of Rights and Freedoms guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society." [emphasis added]

We have been unable to find any cases dealing with Charter challenges of regulation enforcement of this sort. In Fenton v. British Columbia, however, the British Columbia Supreme Court held that Employment Standards Act regulations, which exempted charities from paying a minimum wage to disabled employees, violated the equality provisions of the Charter. The disabled employees were employed with charities and were receiving occupational rehabilitation, education or some other form of therapy. The Court said that there may be a justification for exempting some disabled employees from receiving the minimum wage to enable charities to provide useful rehabilitation settings, but since the exemption extended to all disabled people employed by a charity, it was unjustifiable. The Court held that a disabled person has the right to receive the minimum wage for productive labour even if he may be receiving some occupational rehabilitation, education or therapy.

The Fenton case demonstrates that the Courts may give a broad interpretation to the equality provisions in the Charter. Government regulations may not unjustifiably discriminate against persons with disabilities. The Courts may, in the future, take the view that the enforcement by Government of regulations must also not be performed in a manner which discriminates against persons with disabilities. It is possible, therefore, that a Court may order a municipality to enforce all the provisions of the Code equally.

We trust this letter answers your questions on this matter. Please contact the writer or Bob Bauman if we may expand upon our opinion.

Yours truly,

BULL, HOUSSER & TUPPER

Per: Robert L. Seeman

RLS:wm

BULL, HOUSSER & TUPPER

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Reply Attention of R.L. Seeman
Direct Line 641-4963
Our File No. 9021353

July 27, 1990

Premier's Advisory Council for
Persons with Disabilities
224 - 800 Hornby Street
Vancouver, B.C.
V6Z 2C5

Attention: Ms. Erika R. Trimble

Dear Sirs:

Re: Application of the British Columbia Building Code to the Provincial Crown

Further to the recent meeting with Bob Bauman, we write to advise you on the above matter.

We write to confirm that, as Mr. Bauman had expected, section 14(2) of the Interpretation Act does exempt the Provincial Crown from being bound by any enactment dealing with the construction of buildings or structures. Since the Building Code deals with the construction of buildings, it does not bind the Provincial Crown.

Please contact the writer or Bob Bauman if you wish to discuss this matter further.

Yours truly,

BULL, HOUSSER & TUPPER

Per: Robert L. Seeman

RLS:wm